

Application No. 09/604,157  
Attorney Docket No. 45112-081

consideration (since the amendments amplify issues previously discussed throughout the prosecution); (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) place the application in better form for appeal. Thus, entry of the foregoing amendments, reconsideration and reexamination of the claimed subject matter are respectfully requested.

#### **The Restriction/Election Requirement**

Applicant acknowledges that the restriction/election requirement is final and Applicant respectfully maintains traversal of such for reasons of record.

#### **The Rejections Under 35 U.S.C. §112**

Applicant gratefully acknowledges the withdrawal of the rejections under of Claim 1-3 and 7 under 35 U.S.C. §112, second paragraph.

#### **The Rejections Under 35 U.S.C. §102(b)**

Claims 1, 7, 12 and 13 remain rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Dow et al. In addition, Claims 1 and 12 remain rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Yang-4446153. The Office Action States that the rejection of record is maintained.

Dow: Acceptable vehicles for benzyl alcohol are shown (col. 1, last paragraph, col. 2, top page 1). It is applied to the locus where protection is desired--(col. 1, lines 25-33) happens to be trees, inherently protection from tree eaters, termites, would occur, as they are insects.

Yang: See claims: acceptable carrier and benzyl. Alcohol: claim 1, if present, termites inherently would be controlled.

Office Action dated October 9, 2001 (Paper 5) at pages 4 and 5. Applicant respectfully traverses these rejections for at least the following reasons.

Neither Dow et al. nor Yang disclose or suggest each feature of Applicant's invention as presently recited in the claims. Dow et al. merely discloses halohydrin or chlorohydrin as a suitable carrier for benzyl alcohol to control aphids and similar sucking insects and the red spider. Yang merely discloses benzyl alcohol and phenethyl alcohol as a sanitizing and microbiocidal agent for the bovine teats and udder. Neither Dow et al. nor Yang disclose or suggest the

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claimed invention comprising benzyl alcohol and a pesticidally acceptable carrier selected on a basis for the control of termites. Additionally, Applicant respectfully submits that term "control" is directed to the control of termites and thus, unambiguous as used in the specification. Accordingly, Applicant respectfully requests withdrawal and reconsideration of these rejections.

**Rejections Under Judicially Created Doctrine of Obviousness-type Double Patenting**

Claims 1 and 12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1 and 5 of copending Application No. 09/505,680 (45112-058). In response, Applicant respectfully acknowledges the need to cancel or amend claims if ultimately allowed claims in the above-captioned patent application improperly conflict with, or are coextensive in scope. Applicant respectfully requests that this rejection be held in abeyance until allowable subject matter is indicated.

**CONCLUSION**

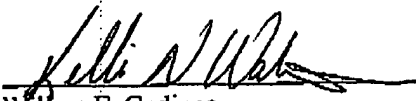
Early consideration and prompt allowance of the pending claims are respectfully requested. If anything could be done to place this application in condition for allowance, e.g., by Examiner's Amendment, Applicants respectfully request that the Examiner contact the undersigned representative at the telephone number listed below.

To the extent necessary, please grant any extension of time deemed necessary for entry of this communication. Please charge any deficient fees, or credit any overpayment of fees, to Deposit Account 500417.

Respectfully submitted,

Date: November 26, 2002

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 872-9307 on the date indicated below, with a coversheet addressed to Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C., 20231.

Date: November 26, 2002

By: Kelli N. Watson  
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## ATTACHMENT

Version With Markings To Show Changes MadeIN THE CLAIMS

Claims 4-6, 8-11 and 14-19 are canceled without prejudice to, or disclaimer of, the subject matter they contain.

Claims 1, 7, 12 and 13 are amended, as follow.

1. (Twice Amended) A ~~contact pesticidal~~ composition for the control of termites, said composition comprising, ~~in admixture with~~ a pesticidally acceptable carrier, and at least one plant essential oil compound selected from ~~the~~ group consisting of pure aldehyde C16, amyl cinnamic aldehyde, amyl salicylate, anisic aldehyde, benzyl alcohol, benzyl acetate, cinnamaldehyde, cinnamic alcohol, carvacrol, carveol, citral, cineole, citronellol, p-cymene, diethyl phthalate, dimethyl salicylate, dipropylene glycol, eucalyptol, iso-eugenol, galaxolide, guaiacol, ionone, menthol, methyl anthranilate, methyl ionone, methyl salicylate,  $\alpha$ -phellandrene, pennyroyal oil perillaldehyde, 1- or 2-phenyl ethyl alcohol, 1- or 2-phenyl ethyl propionate, piperonal, piperonyl acetate, piperonyl alcohol, D-pulegone, terpinen-4-ol, 4-tert butylcyclohexyl acetate, thyme oil, trans-anethole, metabolites of trans-anethole, vanillin, ethyl vanillin, said composition having a pesticidally effective amount of compound(s) selected on a basis of pesticidal control for termites.

4. [CANCELED]

5. [CANCELED]

6. [CANCELED]

7. (Amended) A method for controlling termites, which comprises applying to ~~the~~ locus where control is desired a pesticidally-effective amount of the composition of claim 1.

8. [CANCELED]

9. [CANCELED]

10. [CANCELED]

11. [CANCELED]

12. (Amended) A ~~pesticidal~~ composition for the control of termites, said composition comprising ~~benzyl alcohol in admixture with~~ a pesticidally acceptable carrier and benzyl alcohol.

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wherein a pesticidally effective amount of benzy| alcohol is selected on a basis of pesticidal control for termites.

13. (Amended) A method for controlling termites, which comprises applying to ~~athe~~ locus where control is desired a pesticidally-effective amount of the composition of claim 12.

14. [CANCELED]

15. [CANCELED]

16. [CANCELED]

17. [CANCELED]

18. [CANCELED]

19. [CANCELED]

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